S.B.CIVIL WRIT PETITION NO.910/2004

H/C Raj Bahadur Singh
v.
Union of India & Ors.

DATE OF ORDER :: 4th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.K. Nanda, for the petitioner.
Mr. M.S. Godhara for Mr. V.K. Mathur, for the respondents.

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The petitioner, a Head Constable with Border Security Force, gave a notice dated 19.5.2003, in the terms of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Rules of 1972"), to the appointing authority seeking voluntary retirement from service w.e.f. 30.11.2003. The authority competent accepted the same and by a letter dated 8.9.2003 conveyed the petitioner that his name shall be struck off from the strength of the Force on 30.11.2003. The date of retirement at the instance of the petitioner himself was changed from 30.11.2003 to 29.2.2004 under an order dated 11.9.2003, however, while doing so the petitioner executed an undertaking in following terms:-

"UNDER TAKING CERTIFICATE

I, No.800017501 Rank: HC Name: Raj Bahadur Singh of STC BSF Jodhpur, hereby undertake that I shall not withdraw my

Voluntary Retirement from Service tendered by me w.e.f. 29.2.04, once accepted by the competent authority.

Place : STC BSF Jodhpur No.800017501
Rank HC
Dated, the 10.12.03 Name Raj Bahadur
STC BSF Jodhpur"

The petitioner by an application dated 13.2.2004 again made a request to the authority competent to change the date of retirement from 29.2.2004 to 30.6.2004. After giving an opportunity of hearing to the petitioner the competent authority maintained 29.2.2004 as the date of retirement of the petitioner and also negatived by letter dated 20.2.2004 the request to change the date of retirement on following counts:-

"(a)Firstly the retirement from service w.e.f. 30.11.03 was accepted by the competent authy vide letter dt 08 Sep' 2003;

(b)The competent authority extended the date of vol retirement from 30.11.03 to 29.2.04 vide Order No.7-23-27 dt 11 Sep 03

(c)The petitioner being under posting orders to 29 Bn BSF since May' 2003 and the Ftr HQ R&G having asked for an undertaking that the petitioner will not withdraw his retirement from service once accepted by the competent authority and the same having been forwarded to Ftr HQ R & G.

(d)Pension case has been submitted to PAD BSF; and

(e)there is no reasonable ground for withdrawl of the vol retirement earlier accepted by the CA wef 29.2.2004."

After rejection of the request to change the date of retirement the petitioner under an application dated 21.2.2004 sought withdrawal of the notice given by him seeking voluntary retirement and to permit him to serve the respondents for one more year with a view to avail the benefit of enhancement in pension due to the decision of Government of India for merger of Dearness Allowance with pay. No response was given to the application dated 21.2.2004 and the date of retirement of the petitioner was maintained as 29.2.2004, hence this petition for writ was filed by the petitioner on 24.2.2004. While seeking a writ to quash the order dated 11.9.2003 accepting the notice for voluntary retirement w.e.f. 29.2.2004 a direction is also sought for the respondents to continue the petitioner in service.

The contention of the petitioner is that he withdrew the notice for voluntary retirement before the date intended for retirement, therefore, non-acceptance of the same is unjust and arbitrary, as such is in violation of Article 14 of the Constitution of India. To substantiate the contention reliance is

placed upon the judgments of Hon'ble Supreme Court in the cases of J.N.Srivastava v. Union of India [(1998)9 SCC 559], Union of India & Anr. v. Wing Commander T. Parthasarathy [(2001)1 SCC 158], and Srikantha S.M. v. Bharath Earth Movers Ltd. [2005 SCC (L&S) 1119].

In reply to the writ petition it is urged that the petitioner while getting the date of retirement changed from 30.11.2003 to 29.2.2004 submitted an undertaking to the effect that he will not withdraw the notice for voluntary retirement once accepted by the competent authority, as such he is estopped from withdrawing the same. The respondents also submitted that the petitioner only to frustrate an order of transfer dated 7.5.2003, that was served upon him on 17.5.2003, abused the provisions of the Rules of 1972. According to the respondents under an order dated 7.5.2003 the petitioner was transferred from Training Centre, BSF, Jodhpur to 29 Battalion, Border Security Force, however, on 19.5.2003 he submitted an application seeking voluntary retirement w.e.f. 30.11.2003, therefore, in view of the instructions of the Head Quarters the order of transfer was treated as cancelled. The petitioner due to his certain personal reasons got the date of retirement changed from 30.11.2003 to 29.2.2004 and thereafter also sought extension upto 30.6.2004. According to the respondents this entire exercise was done by the petitioner only with a view to make the

order of transfer dated 7.5.2003 frustrated. In view of the factual background above, the contention of counsel for the respondents is that conduct of the petitioner disentitles him to claim for any relief under Article 226 of the Constitution of India. The respondents while placing reliance upon Rule 48-A(4) of the Rules of 1972 asserted that once a government servant who has elected to retire voluntarily by giving a necessary notice to the appointing authority, cannot withdraw it except with specific approval of such authority and in the instant matter the competent authority has refused to approve withdrawal for definite and sound reasons, therefore, the petition for writ deserves rejection.

In rejoinder to the reply, while reiterating the facts stated in petition for writ, it is pointed out by the petitioner that the order of transfer dated 7.5.2003 was served upon him on 22.5.2003 and not on 17.5.2003 as said in reply to the writ petition. A photostat copy of the order of transfer is also placed on record as Anx.P/11. From perusal of the document Anx.P/11 it appears that it is not the order dated 7.5.2003 but a consequential order dated 20.5.2003.

Heard counsel for the parties.

Being based on number of authoritative pronouncements of Hon'ble Supreme Court, I am having

no hitch in accepting the argument made by counsel for the petitioner that till the relationship of the employer and employee expires the employee possess a right to withdraw his proposal for voluntary retirement, however, this normal rule would not apply in full force to a case where such withdrawal is dependent to a statute. The issue with regard to voluntary retirement of the petitioner is regulated under Rule 48-A of the Rules of 1972 and relevant portion of that reads as follows:-

> “48.A. Retirement on completion of 20 years' qualifying service
>
> (1)At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.
>
> (2)The notice of voluntary retirement given under sub-rule(1) shall require acceptance by the appointing authority:
>
> Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.
>
> (4)A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from

> withdrawing his notice except with the specific approval of such authority:
>
> Provided that the request for withdrawal shall be made before the intended date of his retirement."

Hon'ble Supreme Court in the case of Balram Gupta v. Union of India & Anr., reported in 1987 (Supp.) SCC 228, while dealing with the provisions of Rule 48-A(4) of the Rules of 1972, held as under:-

> "8. xxxxx The appropriate rule sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the request for withdrawal shall be made before the intended date of his retirement. That had been done. The approval of the authority was, however, now given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the government servant cannot withdraw except with the approval of such authority."

In the same case it was also held that statutory authority while considering a request for withdrawal of the notice given under Rule 48-A(1) of the Rules of 1972 is required to act reasonably and

rationally. The relevant portion of the judgment referred above reads as follows:-

> "11. xxxxx It may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter."

Hon'ble Supreme Court in the case of Balram Gupta (supra) also dealt with the issue as to what should be the criteria and considerations to deal with a request for withdrawing the notice for voluntary retirement. The discussion made by the Hon'ble Apex Court is as follows:-

> "12. xxxxx In the modern age we should not put embargo upon people's choice or freedom.

If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways

> "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

In view of the law laid down by Hon'ble Supreme Court in the case of Balram Gupta (supra) the approving authority should be flexible in accepting the request for withdrawal of the notice for voluntary retirement till it does not jeopardize government or administration.

By applying the law laid down by Hon'ble Supreme Court in the case of Balram Gupta (supra), I found that the approving authority was quite flexible in the instant matter while dealing with the request of the petitioner for voluntary retirement. Pertinent to be noticed that at the first instance the petitioner sought voluntary retirement w.e.f. 30.11.2003. The proposed date of retirement was changed at the instance of the petitioner. While changing the date of retirement an undertaking was given by the petitioner to the extent that he shall not withdraw his proposed voluntary retirement w.e.f. 29.2.2004. Even after submission of such undertaking the petitioner again made a request to defer his retirement upto 30.6.2004. The petitioner withdrew the request for voluntary retirement on 21.2.2004 with a condition to permit him to serve for one more year. A remarkable fact is that the petitioner was transferred

from Training Centre, Jodhpur to 29 Battalion, Border Security Force under an order dated 7.5.2003 and the order of transfer was cancelled due to the notice given by the petitioner under Rule 48-A(1) of the Rules of 1972. The approving authority while rejecting the request of the petitioner for withdrawing the notice for voluntary retirement gave cogent reasons. In quite unambiguous terms the approving authority noticed that at first instance the application for voluntary retirement was accepted and the petitioner was to be retired from 30.11.2003 but the date of retirement was changed by 29.2.2004 at the request of the petitioner himself. He further pointed out that his pension case has been submitted to the P.A.D., Border Security Force, New Delhi and no reasonable ground was found for withdrawal of voluntary retirement. It is true that the petitioner in the application dated 21.2.2004 gave a reason that his pensionary benefits shall be enhanced due to merger of Dearness Allowance with pay but at the same time in the application aforesaid he made a request to permit him to serve the Force for one more year.

The facts of the case clearly establish that the petitioner was not at all firm on one stand. The indecisiveness on part of the petitioner certainly effected and jeopardized the administration. I also found force in the contention of the respondents that the petitioner only with view to frustrate the order

of transfer submitted an application under Rule 48-A (1) of the Rules of 1972. It is not in dispute that the order of transfer was issued on 7.5.2003. The document Anx.P/11 placed on record by the petitioner is not the actual order of transfer but is an order consequential to that.

In totality of the facts and circumstances of the case I am convinced that the appointing authority while exercising powers under Rule 48-A(4) of the Rules of 1972 rightly refused to accept the request of the petitioner for withdrawal of the notice seeking voluntary retirement.

In view of the discussion made above, this petition for writ is having no merit and, therefore, the same is dismissed.

(GOVIND MATHUR),J.

kkm/ps.